

SENATE BILL REPORT

SB 5957

As Reported By Senate Committee On:
Natural Resources, Energy & Water, March 5, 2003

Title: An act relating to the collection and use of water quality data.

Brief Description: Establishing a system of standards and procedures concerning water quality data.

Sponsors: Senators Hargrove, Rasmussen, Morton, Swecker, Doumit, Sheahan, Oke and Brandland.

Brief History:

Committee Activity: Natural Resources, Energy & Water: 2/27/03, 3/5/03 [DPS, DNP].

SENATE COMMITTEE ON NATURAL RESOURCES, ENERGY & WATER

Majority Report: That Substitute Senate Bill No. 5957 be substituted therefor, and the substitute bill do pass.

Signed by Senators Morton, Chair; Hewitt, Vice Chair; Doumit, Hale, Hargrove, Honeyford and Oke.

Minority Report: Do not pass.

Signed by Senators Fraser and Regala.

Staff: Genevieve Pisarski (786-7488)

Background: The federal Clean Water Act requires states to report on the quality of water bodies and to list those that are impaired. For those listed as impaired, a Total Maximum Daily Load (TMDL) must be prepared, regulating the amounts of pollutants that may be discharged and allocating the amounts among their sources. To accomplish these requirements, states evaluate existing and readily available water quality data and information and determine which data they will rely upon. The governing federal regulation requires quality assurance and control programs to assure scientifically valid data.

Summary of Substitute Bill: Standards and procedures are adopted to require use of credible water quality data for developing water quality standards, listing waters whose beneficial uses are impaired by pollutants, developing total maximum daily loads for impaired waters, determining whether beneficial uses are being supported, and determining whether waters have been degraded.

For water quality data to be considered credible, the Department of Ecology must determine that quality control procedures were followed and documented, that data is representative of conditions at the time, the number of samples is adequate for the water and the parameters being analyzed, the method is accepted in the scientific community, and the data was

collected consistent with these requirements. The department must adopt rules for collection of credible data.

The department must consider the nature of the water body, when assessing whether it is impaired. A water body must not be listed as impaired, if naturally occurring conditions alone are sufficient to violate water quality standards. A water body must not be listed as impaired on the basis of a narrative or biological criterion, if a numerical criterion has been adopted, unless specific factors for why the numerical criterion is inadequate are identified. A water body must not be listed solely as a result of violations of national pollutant discharge elimination system program permits that need to be enforced.

Knowing misrepresentation of data is subject to criminal penalties under applicable existing law.

Substitute Bill Compared to Original Bill: The provisions are made prospective, with an opportunity to rectify past actions of the department. Collection of data is not limited to the department or a professional designee. Requirements concerning listing outside of the normal cycle are removed. An employee of the department who knowingly misrepresents data is subject to criminal penalties under applicable existing law.

Appropriation: None.

Fiscal Note: Requested on February 24, 2003.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: There could also be independent third party review of data. Data has been used to support foregone conclusions, along with unrealistic models and experiments. TMDL decisions range from excellent to atrocious, depending on the personnel. There have been severe economic consequences. Regulation must be supported by good data to avoid costly consequences. Other states have adopted similar requirements.

Testimony Against: Both state and federal quality assurance and quality control policies are already in place and include several of the proposed requirements. The intent is good, but the language is unclear and, in some cases, overly specific; this will create difficulties for rulemaking, which will be expensive. Policy, rather than rule, is preferable, because it makes changes and improvements easier. Many volunteers and permittees who are trained and qualified to collect data would be excluded, and their data from the past could not be used. It is unclear how much past work would have to be redone. There are inconsistencies with the Clean Water Act.

Testified: Pat Hamilton, Pacific County Commissioner (pro); Bryan Harrison, Pacific County (pro); Jane Rose, WCA Chair, Ecology/Land Planning, Farm Bureau, Rose Ranch (pro); Hertha Lund, Farm Bureau (pro); Bruce Wishart, People For Puget Sound (con); Megan White, Dept. of Ecology (concerns); Scott Hazlegrove, WA Assn. of Sewer and Water Districts (pro); Mike Schwisow, WA State Water Resources Assn. (pro).